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1. Purpose and Scope. This chapter contains the procedures for the development and review of survivor claims by the CE. The chapter also describes recommended decisions in survivor claims, the time of payment, the order of payment for eligible survivors, rejected compensation, and multiple payments.
2. Policy. The CE is responsible for processing survivor claims and ensuring benefits are appropriately paid to eligible survivors under the provisions of 42 U.S.C. 7384s(e) and 7384u(e).
3. Survivor Claims. If an employee eligible for EEOICPA benefits dies before his/her claim is accepted and/or before compensation is paid, one or more of the employee's survivors may file a claim for compensation under EEOICPA. Whenever a survivor files a claim, the CE is responsible for adjudicating the claim(s) filed and processing any compensation which may be payable.
4. Filing a Claim for Survivor Benefits. A request for survivor benefits must be in writing. Each claimant, including a minor child, must file a separate EE-2 form. In the case of minor children, a legal guardian may complete the form on their behalf. Once a claim has been filed, the CE should take the following steps in determining whether the survivor is eligible for compensation.
 - a. Verify the death of the employee: Verification must include a copy of the employee's death certificate.
 - b. If not already documented in the case file, the CE must establish that the person named as the employee had a medical condition and covered employment under EEOICPA.

The CE must make every effort to obtain medical documentation to establish the employee sustained a covered medical condition. Documentation such as the physician's reports, hospital/hospice records, autopsy reports, etc. should be requested by the CE.

 - c. Establish the relationship of the survivor to the covered employee. Along with a completed EE-2, the claimant must provide documentation establishing his or her relationship to the covered employee. If such

4. Filing a Claim for Survivor Benefits. (Continued)

documentation is not submitted with the claim, the CE will write to the claimant requesting the necessary evidence.

(1) For a surviving spouse, documentation would consist of a copy of his/her marriage certificate. For a surviving child, documentation would consist of a copy of the child's birth certificate or an adoption certificate. If a birth or adoption certificate is not available, the CE should obtain any evidence possible to establish the parent-child relationship. The CE should exercise his/her discretion in reviewing the documentation provided, and base the adjudication on logical rationale.

(2) The surviving partner in a relationship in which the couple lived together and/or the surviving partner is claiming a common law marriage would be considered a spouse of the deceased employee if the situation met the state's criteria for establishing a common law marriage. The CE must document in the case file the requirements used to establish a common law marriage in the state(s) where the couple resided for the entire one-year period prior to the employee's death.

d. Send the claimant Form EE-15/EN-15. If a covered medical condition and covered employment have been established, the EE-15/EN-15 is to be forwarded to the survivor. This form asks the survivor, amongst other things, to identify any other known survivors of the deceased employee.

e. Identifying Potential Survivors. When a potential survivor is identified on the EE-15 or through another development action, the CE will contact the individual (preferably by letter) to explain his/her right to file a survivor claim. This is to be done unless the CE determines the person is clearly ineligible as a survivor under the program. The letter should not indicate whether the individual is qualified to receive benefits, as this is a function of the claim process after an EE-2 has been filed.

4. Filing a Claim for Survivor Benefits. (Continued)

Rather, the letter should outline the general requirements for survivor eligibility. The CE will explain that filing a claim does not guarantee benefits are payable. Both statutory and regulatory requirements must still be met before compensation can be awarded. The named survivor will be asked to complete and submit an EE-2 within 30 days. A blank Form EE-2 should be attached to the correspondence. If the claim is not submitted within the 30 day time period, the CE can proceed with the adjudication of the case file on the assumption that a claim is not forthcoming.

f. Documentation. In order to ensure compensation is paid to the legitimate survivors of the deceased employee, the CE may require a claimed survivor to provide any documents, affidavits, or records that are necessary.

5. Issuing a Recommended Decision. Once the CE has sufficiently investigated the existence of eligible survivors, advised them of their right to file a Form EE-2, and given them 30 days to respond, a recommended decision must be prepared by the CE in accordance with PM 2-1100. Regardless of whether a single survivor or multiple survivors have been identified, one recommended decision that consolidates all claims under an employee's SSN will be issued. The recommended decision will include a finding in regard to entitlement to compensation for each survivor. Specifically, the CE will reference the names of the survivors, whether they are entitled to receive compensation, the amount of compensation payable to eligible survivors, and the basis for the conclusions reached. The CE will prepare a cover letter addressed to each individual survivor along with a copy of the recommended decision.

6. Survivor's Failure to File a Form EE-2. In certain situations, a CE may be able to affirm the existence of an eligible survivor, but attempts to have the survivor file an EE-2 have been unsuccessful. If a CE encounters this situation, the CE will proceed with the issuance of a recommended decision. The decision will include a finding of entitlement for the eligible survivor even though he/she has not filed an EE-2 (non-filing survivor). The compensation for the non-filing eligible survivor will not be distributed among the other survivors who

6. Survivor's Failure to File a Form EE-2. (Continued)

have filed claims, and will be retained in the Fund until he/she comes forward to file a claim.

For example, an EN-15 completed by the spouse of a deceased employee identifies an eligible minor child. The spouse produces a birth certificate and evidence of the child's current address. The child is contacted by the CE, but fails to file an EE-2. As there is sufficient evidence to conclude the child is eligible under the program, the CE proceeds to include the child in the recommended decision. However, the child's share of the compensation remains in the Fund and is not paid out by the DEEOIC. If at a later date, the child contacts the DO indicating his/her intent to pursue a survivor claim, he/she must file a Form EE-2. This will allow the DO to pursue payment of any compensation that may be due.

7. Issuing a Form EE-20. The EE-20 is a form completed by the claimant which provides payment information. The EE-20 will be issued by the FAB after a final decision has been rendered approving the claim for payment. The EE-20 is sent to the claimant along with the final decision. Simultaneously, the case file will be transferred back to the DO for payment.

a. DO receipt of the form EE-20. Upon completion of the EE-20, the claimant will mail the form to the DO for processing of payment. Thereafter, the CE will initiate payment of the lump sum to be distributed according to the instructions in the final decision.

8. Time of Payment in Accepted Claims. The time of payment in accepted claims is the point at which compensation is paid to eligible survivors. Compensation can be paid either by paper check or Electronic Fund Transfer (EFT).

a. Paper Checks: The time of payment is the date the payment is certified by National Office.

b. Electronic Funds Transfer (EFT): The time of payment for EFT is the date the payment is certified by National Office.

c. DO Inquiries Regarding Time of Payment. If the DO has a situation in which the exact time (date) of payment

8. Time of Payment in Accepted Claims. (Continued)

is required, the DO should contact the National Office. The NO will research the claim and provide the information to the DO.

d. Examples of Cases Requiring the National Office to Vacate the Final Decisions Based on the Time of Payment.

(1) There may be a situation in which a minor child is advised by final decision that s/he is eligible for compensation. However, at the time of payment, that child may no longer meet the definition of a minor as noted by state law (see PM 2-200.9b(2)). In such a situation, the case file should be forwarded to the National Office in accordance with the instructions provided in the PM 2-1500 (Modification of a Final Decision).

(2) If the employee is alive when the recommended or final decision is issued, but dies before time of payment, the case file should be forwarded to the National Office in accordance with the instructions provided in the PM 2-1500.

9. Order of Payment in Accepted Claims. Section 7384s(e) and 7384u(e) of the EEOICPA set forth the order of payment in a survivor claim.

a. Compensation to Spouse. If, at the time of payment, there is a living spouse (who was married to the employee for the entire one-year period immediately prior to the employee's death) the living spouse would receive the entire amount of the award. The circumstances under which payment would not be made exclusively to the living spouse are:

(1) The spouse was not married to the employee for the entire one-year period immediately prior to the employee's death.

9. Order of Payment in Accepted Claims. (Continued)

(2) There is a child who meets the requirements of minor as set forth at PM 2-200.9b(2) and is living at the time of payment.

(3) The recommended decision rendered for each claim in which time of payment is a concern must clearly state that the individual will get paid only if s/he meets the eligibility requirements at the time of payment.

b. Compensation to Spouse and Minor Child. If at the time of payment the case file shows a living spouse who was married to the employee the entire one year period prior to the employee's death, and a living minor-age child (of the employee) who is not a natural or adopted child of the living spouse, the compensation is split. Half of the award goes to the spouse and the rest is split amongst all minor-aged children of the deceased employee.

(1) Any issues relating to the age of a living minor child who is not a natural or adopted child of the living spouse must be resolved by the CE before a recommended decision is issued. In addition, payment will only be made if the minor is still eligible at the time of payment.

(2) State law defines the term minor. Specifically, the law in the state in which the minor resides at the time of payment must be adhered to. The CE should document in the case file any information regarding the state law which s/he followed in determining whether the minor met the state's requirement(s).

(3) If the child, based on state law, is not defined as a minor, the living spouse would receive the entire compensation award.

(4) If the minor child is eligible for compensation, the payment should be made to his/her parent, legal guardian, or court-ordered individual who is responsible for the minor's welfare.

9. Order of Payment in Accepted Claims. (Continued)

c. Compensation Payment Order When There is No Spouse. If there is no eligible living spouse, the award will be made in the following order at time of payment.

(1) The compensation will be split between all living children (regardless of age) of the employee.

42 U.S.C. §7384s(e)(3)(B) notes that a stepchild is considered a child if s/he lived with the employee in a regular parent-child relationship. This relationship would be considered valid unless the employee and spouse divorced. When the employee and spouse divorced, the legal relationship dissolved. The stepchild would not be eligible for compensation benefits under EEOICPA.

(2) If none of above, compensation will be awarded to living parents of employee.

(3) If none of above, compensation will be awarded to living grandchildren of employee.

(4) If none of above, compensation will be awarded to living grandparents of employee.

10. Rejected Compensation. If an eligible beneficiary rejects compensation which has been awarded, the compensation will be returned to the Fund. The compensation will not be distributed amongst other eligible beneficiaries of the deceased employee nor will it be given to any individual designated by the beneficiary.

11. Survivor's Death. If one of the survivors on a claim dies before payment is issued, the compensation is reapportioned to the deceased employee's remaining survivors. For example, three survivors of the deceased employee file survivor claims. One of the survivors dies before payment is made. The compensation must be divided between the two remaining living survivors of the deceased employee. Under no circumstances can compensation be paid to the survivors of a deceased survivor.

12. Multiple Payments. In rare situations, a single individual may receive more than \$150,000 in compensation in non-RECA cases and more than \$50,000 in RECA cases. There are additional payment concerns regarding RECA cases that are addressed in PM 2-900.

- a) Employee. No employee may receive more than one lump sum payment for any conditions s/he has contracted. However, s/he may receive an additional lump sum payment for each employee for whom s/he qualifies as an eligible survivor.
- b) Survivor. A survivor may receive one lump sum payment for each employee for whom s/he qualifies as an eligible survivor.